IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an appeal under section 331 of the Code of Criminal Procedure Act No. 15 of 1979 (as amended).

The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Complainant

Court of Appeal Case No.
CA HCC 0118/2024

Vs.

High Court of Nuwara Eliya
Case No.
HCR/080/2021

Nadaraj Vijayakumar

Accused

AND NOW BETWEEN

Nadaraj Vijiyakumar

Accused-Appellant

Vs.

The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Complainant-Respondent

Before: **B. Sasi Mahendran, J.**
Amal Ranaraja, J.

Counsel: Prashan Wickramaratne for the Accused-Appellant

Azard Navavi, A.S.G. for the Respondent.

Argued on: 07.08.2025

Decided on: 22.09.2025

JUDGMENT

AMAL RANARAJA, J.

1. The accused-appellant (hereinafter referred to as the "appellant") has been indicted in the *High Court of Nuwara Eliya* in case number HCR 80/2021.

2. The amended charge in the indictment is as follows;

> That on or about July, 06. 2017, at *Agarapathana,* within the jurisdiction of this Court, the appellant committed the offence of grave sexual abuse by placing his penis on the vagina of a minor under the age of 18 years, for the purpose of sexual gratification, an offence punishable under section 365B(2)(b) of the Penal Code as amended by Act No.22 of 1995, Act No.29 of 1998 and Act No.16 of 2006.

3. At the conclusion of the trial, the appellant has been convicted of the offence in the amended charge and sentenced as follows;

   A term of 10 years rigorous imprisonment, and a fine of Rs.25,000 with a term of 06 months simple imprisonment in default.

   Further, has ordered the appellant to pay a sum of Rs.500,000 as compensation to PW01 with a term of three years simple imprisonment in default.

4. Being aggrieved by the conviction, the disputed judgment and the sentencing order, the appellant has preferred the instant appeal to this Court.

Case of the prosecution

5. At the time of the incident referred to in the amended charge, PW01 has been a 16 year old girl residing in a line room located in the upper division of the Glasgow estate. She has lived there with her father, maternal grandmother and siblings as her mother had gone abroad for employment. At that time, PW01 had been attending the Glasgow Tamil School as a year eleven student.

6. During this period, PW01 has been appointed as a class monitor for a period of one month. In such role, she has taken the initiative to create a chart that assigns each student in the class with specific duties related to cleaning and arranging the classroom each morning before the lessons began.

7. The appellant known to the students, had been conducting extra classes in science and mathematics during the evenings. These additional lessons have been held in a hall referred to as “Praja Shakthi” which was also located in the same estate. Moreover, as a teacher, the appellant has had access to the contact details of students, including those of PW01.

8. The day before the alleged incident, PW01 has expressed her desire to the appellant to obtain a printed copy of the chart prepared by her. The appellant has agreed to this request.

9. Following the appellant’s instructions, PW01 has gone to the building where the appellant conducted extra classes, intending to print the chart from the computer centre located within the same building. PW01 has planned to pick up the printout before heading to school that day. When PW01 arrived at the location, the appellant has led PW01 to the room where the computer centre was situated. Inside the room, PW01 has observed various computers and other equipment.

10. Following that, as narrated by the appellant, it is alleged that the appellant has placed his penis on the vagina of PW01 and engaged in the sexual act described in the amended charge.

11. PW01 has thereafter attended school as usual but she has not been her normal self. Concerned for her well-being, PW04, a teacher at the school, has inquired about what was troubling her, i.e. PW01. At that moment, PW01 has simply stated that she did not want to attend the extra classes conducted by the appellant. However, the following day, after further questioning by PW04 and other staff members, PW01 has revealed the details of the incident involving the appellant.

12. PW01 has documented her account of the incident in writing and this note has been marked as පැ. 2. The school authorities, upon learning of PW01's revelations, have informed the father of PW01 of the same and advised him to file a complaint with the police.

    Unfortunately, the father has not taken such a step.

13. In light of these circumstances, the school authorities have intensified the matter by reporting the incident to the National Child Protection Authority. The National Child Protection Authority has subsequently filed a complaint with the *Agarapathana Police*. The Police have launched an investigation, during which they have recorded statements from PW01 and other witnesses. Additionally, they have arranged for PW01 to undergo a medical examination conducted by a Judicial Medicial Officer. The resulting medico-legal report has been marked පැ.3.

Case of the appellant

14. The appellant has asserted that when he reported to work as usual, around 8.00am on the particular date, PW01 was already present at the location. PW01 has thereafter, requested that the appellant to take a printout of an assignment for her. The appellant has complied with her request, and after receiving the printout, PW01 has left the location.

Grounds of appeal

15. When the matter was taken up for argument, the learned counsel for the appellant urged the following grounds of appeal;

    i. The learned High Court Judge has improperly evaluated the appellant's evidence and has shifted the burden of proof towards the appellant.

    ii. The Learned High Court Judge has misapplied the law relating to corroboration.

    iii. Failure to consider calling for the defence under section 200 (1) of the Code of Criminal Procedure Act No. 15 of 1979.

16. The learned counsel for the appellant has directed the Court's attention to pages 321 and 322 of the brief, contending that the learned High Court Judge has misdirected himself by improperly shifting the burden of proof onto the appellant. The learned counsel emphasises that the appellant bears no such burden to prove his innocence, rather, the responsibility of establishing the case beyond a reasonable doubt lies squarely with the prosecution.

17. To bolster his argument, the learned counsel has cited specific passages from the disputed judgment and the observation of T.S. Fernando, J, in *Martin Singho vs. Queen* 69 CLW at page 22.

"....එසේ නම් ඔහු එලෙස හමුවූ ගුරුවරු කවුරුන්ද යන්න හෝ ඔහු විසින් එම අයවලුන්ව සාක්ෂියට කැඳවීමක් කිරීමට උත්සාහයක් හෝ ගෙන නැත. එමෙන්ම මෙවැනි බරපතල චෝදනාවක් එල්ල කිරීමට නිශ්චිත හේතුවක් ඔහු ප්‍රකාශ කරන්නේද නැත.

.....එවන් තත්ත්වයක් තුල මෙවැනි පාසැලකට ඔහු කියන ආකාරයට උදව් උපකාර කලා නම්, සිසුන්ට අමතර පන්ති නොම්ලේ පවා කලා නම් ඔහුගේ පන්තියේ ශිෂ්‍යාවක් මේ ආකාරයේ බරපතල් චෝදනාවක් ඔහුට විරුද්ධව එල්ල කරයිද යන්න සලකා බැලිය යුතුව ඇත.

...ඔහු මෙම පාසලේ ගුරුවරුන්ට පවා ප්‍රොජෙක්ට් සෑදීමට උදව් - උපකාර කල තැනැත්තෙක් නම් එම පාසැලේම ගුරුවරුන් චූදිතට විරුද්ධව සාක්ෂි ලබාදී ඇත්තේ මක් නිසාද යන්න ඔහු විසින් පැහැදිලි කරන්නේද නැත.

...මේ බරපතල චෝදනාවක් ඔහුට විරුද්ධව එල්ල කිරීමට පිළිගත හැකි හේතුවක් ඔහු විසින් ඉදිරිපත් කරන්නේ නැත."

[*vide* pages 321 and 322 of the appeal brief]

"*As this Court has pointed out on many occasions in the past, where an accused person is not relying on a general or special exception contained in the Penal Code, there is no burden on him to establish any fact.*"

[*vide Martin Singho vs Queen* 69 CLW 21 at page 22]

18. However, upon a close examination of these passages, it becomes evident that the learned high court judge has not imposed a burden on the appellant to present additional witnesses on his behalf. Instead the learned High Court Judge has focused on the testimony already provided by the appellant.

19. The learned High Court Judge's conclusion has been rooted in his assessment of the reliability of the appellant's testimony which he has deemed insufficiently cogent. Consequently, the learned High Court

Judge has found the testimony of the appellant to be unreliable and inadequate to support the appellant's defence effectively.

20. Furthermore, the appellant's testimony indicates that on the day in question, he arrived at the building known as "Praja Shakthi", around 8.00am in the morning. Upon his arrival, he has found PW01 already present at the location. At her request, the appellant has printed a copy of a geography related chart and subsequently handed it over to her. Shortly thereafter, PW01 has left the location.

21. Upon, examining, PW01's testimony, it becomes evident that none of the facts presented by the appellant have been suggested to PW01 during cross-examination. This lack of inquiry raises significant questions about the credibility of the appellant.

22. No satisfactory explanation has been offered for this discrepancy, which suggests that the appellant's version of events may be an afterthought, created in response to the ongoing legal proceedings. In light of this circumstance, it can be argued, that the inconsistency in the testimony undermines the reliability of the appellant's narrative.

23. In *Thalerathnalage Wipula vs. The Republic of Sri Lanka* CA No. 216/2005, decided on 01.09.2009, Sisira de Abrew, J, has stated,

> *"Learned Counsel contended that the rejection of the evidence of the wife of the accused-appellant by the learned Trial Judge was wrong. The position taken-up by the wife of the accused-appellant is that the accused-appellant was arrested in her presence. But, this position was not suggested to the prosecution witnesses when they gave evidence. What is the effect of such failure?*

In this connection, I am guided by the judgment of the Indian Supreme Court in ***Sarwan Singh vs. State of Punjab*** *AIR 2002 SC 3652. Indian Supreme Court in the said case observed thus:*

"It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination it must follow that the evidence tendered on that issue ought to be accepted". This judgment was cited with approval in the case of ***Bobby Mathew vs. State of Karnataka*** *2004 3 Cri. L. J. page 3003."*

24. It has also been contended that, in light of the fact that PW01 had the contact details of the appellant, PW01 had an intimate acquaintance with him. This fact has been suggested to PW01 in cross-examination. Thereby, subtly implying that even if a sexual act was committed on PW01, it was with her consent.

25. PW01 has explained as to how she was able to get the contact details of the appellant. PW01 together with the other students who attended the extra classes conducted by the appellant, have been given the contact details of the appellant, and the appellant also obtained such details from the students. This explanation has not been challenged by the appellant during the cross examination of the appellant.

26. On the morning, following the sexual abuse incident involving the appellant, PW01 has attended school but noticeably not been her usual self. Concerned about her behaviour, a teacher has approached PW01 to inquire about what was troubling her. During the conversation, PW01 has expressed her reluctance to attend the extra classes conducted by the appellant.

27. The following day, the same teacher, along with additional staff members have sought to understand PW01's situation further. At that point PW01 has disclosed the details of the incident involving the appellant to the teacher. In response, the teacher, has promptly informed the school principal and subsequently requested PW01 to document her account of the incident in writing. This written note has been marked as "පැ-2".

28. Following this, the principal and the teachers involved has sought guidance from law enforcement authorities and advised PW01's father to lodge a complaint with the police regarding the incident. However, when the father has not taken the recommended action, the principal and the teachers have intensified the matter by notifying the *Child Protection Authority*.

29. Consequently, the *Child Protection Authority* has lodged a formal complaint with the *Agarapathana Police* leading to the commencement of an investigation.

30. Both PW02 (i.e. the Principal) and PW04 (i.e. the Teacher) has provided testimony consistent with events outlined above. Importantly, their testimonies did not simply reiterate the facts conveyed to them by PW01; they offered additional context and details. In light of this, the learned High Court Judge has not misdirected himself in determining that the testimonies of PW02 and PW04 corroborated PW01's narrative.

In *Sana vs. Republic of Sri Lanka* [2009 1 SLR 48], Sisira De Abrew, J, has stated;

> "*The corroborative facts and evidence must proceed from someone other than the witness to be corroborated. This means*

that his previous statements, even when admissible cannot be used to corroborate him, such as proof of a complaint in a sexual case or a previous act of identification is not corroborative of the evidence of the witness, even though by showing consistency, it can to some extent strengthen his credibility".

31. Section 200(1) of the Code of Criminal Procedure Act (No.15 of 1979) provides as follows;

> "*(1). When the case for the prosecution is closed, if the Judge wholly discredits the evidence on the part of the prosecution or is of opinion that such evidence fails to establish the commission of the offence charged against the accused in the indictment or of any other offence of which he might be convicted of such indictment, he shall record verdict of acquittal; if however the Judge considers that there are grounds for proceeding with the trial he shall call upon the accused for his defence."*

32. In discussing the provisions as to section 200(1), Salaam J in *Harold Rex Jansen vs. Hon. Attorney General [CA Application No.151/13 decided on 26.02.2014]* has stated;

> "*The expression "**there are grounds for proceeding with the trial**" as used in Section 200(1) cannot certainly suggest or convey that the High Court Judge is obliged to give elaborate reasons for his decision to call for the defence. The grounds for proceeding with the trial at the close of the case for the prosecution means nothing more than the High Court Judge **CONSIDERING** that there are grounds for proceeding with the trial. The ordinary meaning of the word 'CONSIDER' as it occurs in Section 200(1) would mean "to think about carefully", especially in order to make a decision. Quite obviously, the Section does not make it obligatory on the part of the High Court Judge to give reasons as to why he considers the case as*

disclosed by the prosecution merits further trial. If elaborate reasons are required to be assigned before calling the defence, then, every High court criminal trial (without a jury) ought to carry two Judgments, one at the close of the case for the prosecution and other at the close of the defence, i.e. under sections 200 and 203 respectively."

33. According to the provisions outlined in section 200(1) of the Code of Criminal Procedure Act No.15 of 1979, a High Court Judge is tasked with appraising himself with the prosecution's evidence to determine whether the accused has a case to answer. Notably in conducting such appraisal, the Judge is not required to provide written reasons for his determination.

34. In those circumstances, I am not inclined to interfere with the conviction, the disputed judgment together with the sentencing order and dismiss the appeal.

Appeal dismissed.

35. The Registrar of this Court is directed to send this judgment to the *High Court of Nuwara Eliya* for compliance.

Judge of the Court of Appeal

B. SASI MAHENDRAN, J.

I agree

Judge of the Court of Appeal